

FILED

2006 OCT 17 AM 8:21

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES CUNNINGHAM,

Petitioner,

v.

I. CLAY, Warden

Respondent.

Civil No. 06-2168 JM (CAB)

**ORDER DISMISSING CASE  
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, but has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254. If Petitioner wishes to proceed with this case, he must submit, **no later than December 6, 2006**, a copy of this Order with the \$5.00 fee or with adequate proof of his inability to pay the fee. **For Petitioner's convenience, the Clerk of Court is directed to attach a blank motion to proceed in forma pauperis to this Order.**

**IT IS SO ORDERED.**

DATED: 10/16/06

Jeffrey T. Miller  
Jeffrey T. Miller  
United States District Judge